

No. 12,333

IN THE

United States Court of Appeals  
For the Ninth Circuit

ARCADIO CABEBE,

*Plaintiff-Appellant,*

VS.

DEAN ACHESON, Secretary of State of  
the United States of America,

*Defendant-Appellee.*

On Appeal from the District Court of the United States  
for the Territory of Hawaii.

BRIEF FOR ARCADIO CABEBE, PLAINTIFF-APPELLANT.

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**OPINION BELOW.**

The memorandum decision of the District Court is reported in 84 F. Supp. 639 (1949), and is found in the record on pages 13-16.

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**JURISDICTION.**

The jurisdiction of the United States District Court for the Territory of Hawaii is founded upon Section 503 of the United States Nationality Act, 8 U.S.C.A.,

Section 903, and upon the validity of Section 10(a) of the Philippine Independence Act, 48 U. S. Stat. 456, and the Presidential Proclamation of Philippine Independence, 60 U. S. Stat. 1352.

Judgment was entered in the District Court on June 23, 1949. (R. 17.)

Motion for extension of time for appeal was filed on July 26, 1949 (R. 18) and an affidavit of W. Y. Char in support of the motion was filed on July 26, 1949. (R. 18.) An order granting the filing of the appeal to August 22, 1949, was filed on July 26, 1949 (R. 20) and notice of appeal was filed on July 28, 1949. (R. 20.)

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#### **QUESTION PRESENTED.**

Did the Philippine Independence Act of July 4, 1946 divest a United States national of Filipino descent, who was then a permanent resident of the Territory of Hawaii, of his status as a United States national and relegate him to that of an alien?

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#### **CONSTITUTIONAL PROVISIONS, STATUTES AND PROCLAMATION.**

The pertinent provisions of the Constitution, federal statutes and presidential proclamation appear in the Appendix.



**SPECIFICATIONS OF ERRORS.**

The District Court in Hawaii is in error in this case, in that:

1. The court erred in holding that the appellant lost his status as a United States national and became an alien when Congress granted complete independence to the Philippine Islands on July 4, 1946, at which time he was a permanent resident of the Territory of Hawaii.
2. The court erred in holding that appellant's status as a United States national was not a vested right, hence when Congress reduced him from the favorable status of a United States national to the lowly status of an alien, it was not contrary to the Fifth Amendment of the United States Constitution.
3. The court erred in holding that Congress has the right to reduce his status from that of a United States national to that of an alien, thereby depriving the appellant of the right to truthfully state, "I am an American", contrary to the First Amendment of the United States Constitution.
4. The court erred in holding that the Philippine Independence Act did reduce appellant from his United States national to that of an alien and such holding had no retroactive effect in appellant's status to that of an alien contrary to Section 9, Article I of the United States Constitution.
5. The court erred in holding that the reduction of his status from that of a United States national to that of an alien does not have the same effect as banishment and exile and, therefore, does not

thereby inflict cruel and unusual punishment upon him, contrary to the Eighth Amendment of the Constitution.

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### **STATEMENT OF FACTS.**

Appellant was born on October 10, 1910 (R. 32) in Narvacan, Ilocos Sur, Philippine Islands (R. 31) and first arrived in Honolulu in March, 1930. (R. 32.) Appellant requested and was denied a passport for the purpose of entering Guam, which passport he applied for on the basis of being, as of the date of his application, a national of the United States. (R. 34.) He was lawfully in Hawaii and was a permanent resident of the United States at the time the Philippine Islands acquired its independence. (R. 34.) Appellant did not affirmatively commit any act to expatriate himself. (R. 33.) Appellee admitted the facts stated in appellant's complaint but denied any conclusions of law. (R. 35.) Appellant had filed a petition for naturalization (R. 36) which the court permitted to be withdrawn without prejudice. (R. 37.)

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### **SUMMARY OF ARGUMENT.**

1. The intent of Congress in passing the Philippine Independence Act was to create a new nation from the territory and people of the Philippine Islands and the control of the newly formed government was con-

fined to the people who were residing within the geographical limits of the Philippine Islands.

2. In the absence of any provision in the Philippine Independence Act to include the United States nationals of Filipino descent, residing permanently in the United States, the United States nationals of Filipino descent are exempt from the jurisdiction and control of the newly formed Philippine government, remaining nationals of the United States.

3. Inasmuch as Congress has provided in 8 U.S. C.A., Section 800, entitled, "Right of Expatriation" that "the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty and the pursuit of happiness", Congress cannot deprive appellant of his right of expatriation by arbitrarily divesting him of his United States nationality and relegating him to the lowly status of an alien.

4. Congress cannot, by discriminatory legislation, arbitrarily and capriciously single out the United States nationals of Filipino descent and make them citizens or nationals of the Philippines, under its changed status of an alien nation. His United States nationality is a vested right which is protected by the Fifth Amendment of the United States Constitution.

5. Congress, by relegating his status from that of a United States national to that of an alien, denies his freedom of speech because he can no longer state

truthfully, "I am an American", contrary to the First Amendment of the Constitution.

6. Congress, by reducing appellant from his status of a United States national to that of an alien, in effect retroactively caused him to lose all of his rights as a United States national, contrary to Section 9, Article I of the Constitution.

7. Congress, by changing appellant's status from that of a United States national to that of an alien does, in effect, banish and exile him and thereby does inflict cruel and unusual punishment upon him, contrary to the Eighth Amendment of the Constitution.

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### ARGUMENT.

CONGRESS, BY THE PHILIPPINE INDEPENDENCE ACT, CREATED A NEW NATION FROM "THE TERRITORY AND PEOPLE OF THE PHILIPPINE ISLANDS". THIS NEW NATION HAS JURISDICTION OVER ONLY THE PEOPLE OF THE PHILIPPINE ISLANDS WITHIN ITS GEOGRAPHICAL LIMITS.

In the treaty of peace between the United States and Spain, signed at Paris December 10, 1898,<sup>1</sup> the Crown of Spain ceded the Philippine Islands to the United States.

In conformity with the provision of the treaty with Spain, the civil rights and political status of the native inhabitants of the ceded territories would be determined by Congress, by the act of April 12, 1900.<sup>2</sup>

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<sup>1</sup>30 U. S. Stat. 1754.

<sup>2</sup>31 U. S. Stat. 77.

By the act of July 1, 1902,<sup>3</sup> Congress created a civil government for the administration of the affairs in the Philippine Islands. Congress further provided that "all inhabitants of the Philippine Islands continuing to reside therein, who were Spanish subjects on the 11th day of April, 1899 and then resided in said islands and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands, except such as shall have elected to preserve their allegiance to the Crown of Spain."

By a number of court decisions,<sup>4</sup> the inhabitants of the Philippine Islands have been determined and classified as "nationals" of the United States.

However, during the emergency period of World War II, a native-born Filipino was held to be an "alien" under the Alien Registration Act, but this decision<sup>5</sup> was definitely limited and confined to said emergency period of World War II.

The political status of the Filipinos was determined by the Act of October 14, 1940<sup>6</sup> and they came within the meaning of "national" as "a person, who, though not a citizen of the United States, owes permanent allegiance to the United States. It does not include an alien".

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<sup>3</sup>32 U. S. Stat. 691.

<sup>4</sup>*Gonzales v. Williams*, 192 U. S. 1;

*Toyota v. U. S.*, 268 U. S. 402;

*Zarate v. Allen*, 32 H. 118;

*Alfajara v. Fross* (1945), 26 Cal. (2d) 358.

<sup>5</sup>*U. S. v. Gancy* (1944), 54 F. Supp. 755, affirmed 149 F. (2d) 788.

<sup>6</sup>54 U. S. Stat. 1137, 8 U.S.C.A., Section 501(b).



With the foregoing historical background, appellant is now confronted with the impact of the provisions of the Philippine Independence Act of March 24, 1934,<sup>7</sup> and the Presidential Proclamation of July 4, 1946,<sup>8</sup> both of which are set out in full in the Appendix. The act and the proclamation, in determining whether or not appellant and 100,000 other Filipinos residing permanently in the United States are United States nationals, determine also their social, economic and political status.

By the language of Section 10(a) of the Philippine Independence Act, Congress declared that the United States government surrendered jurisdiction and control "then existing and exercised by the United States in and over the territory and people of the Philippine Islands" irrespective of whether they were citizens of the Philippine Islands or aliens residing therein permanently. The reasonable interpretation of the wording of Section 10(a) is that the "people of the Philippine Islands" were those who were residing permanently in the Philippine Islands, within the geographical boundaries of the Islands. The "people of the Philippine Islands" were composed of many social groups and mixtures, either citizens or aliens, who made up the community and helped in forming the new nation. If Congress had intended to limit specifically the citizens of the Philippine Islands, it could have expressed in no uncertain term the words "citizens" of the Philippine Islands, as it did on numerous occa-

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<sup>7</sup>48 U. S. Stat. 456.

<sup>8</sup>60 U. S. Stat. 1352.

sions in previous legislations on newly acquired territories such as Hawaii, Louisiana, and the Northwest Territory. A full and complete discussion of admission of territories into the Union and naturalization by treaty is found in the case of *Boyd v. Nebraska*<sup>9</sup> and *Van Dyne on Citizenship of the U. S.*, pages 143-248. Congress could also have used specific terms to include those Filipinos who have had permanent residence in the United States and with no thought or intent of returning to their native land.

*A fortiori*, when Congress defined other terms in the Phillippine Independence Act with great care and failed to define "people of the Philippine Islands" therein, Congress must have done so with a purpose, to-wit: that the people, who made up the community of the Islands, were to have the privilege of forming and becoming a part of the new nation, if they so desired, and those who did not so desire to be a part of the new nation were to have the privilege of retaining their former allegiance or acquiring new allegiance elsewhere.

On its face, the language is such that it is confined to those people residing in the Islands to form a new nation.

In the cases of *In Desbois Case*, 2 Mart. (La.) 185 (decided in 1812), and cited in *Boyd v. Nebraska*, 12 S. Ct. 375 at page 383 (1892), Desbois, a Frenchman and a foreigner was considered an "inhabitant" of the territory of Louisiana and became a United States

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<sup>9</sup>12 Sup. Ct. 375.

citizen by congressional naturalization. The court said:

“If the word ‘inhabitants’ in the first section of this act, must be taken *lato sensu*; it cannot be restrained so as to include citizens of the United States only, for other persons are afterwards called upon to vote. There is not any treaty or other instrument which may be said to control it. Every attempt to restrict it must proceed on principles absolutely arbitrary.”

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THE PHILIPPINE INDEPENDENCE ACT CONTAINED NO PROVISION DIVESTING U. S. NATIONALS OF FILIPINO DESCENT, WHO HAD PERMANENT RESIDENCE IN THE U. S., OF THEIR U. S. NATIONALITY. IN ITS ABSENCE, INTERNATIONAL LAW SHOULD CONTROL THE STATUS OF THESE U. S. NATIONALS.

We wish to point out that nowhere in the Philippine Independence Act, in the President's Proclamation, expressly or impliedly, are Filipinos residing in the United States included.

The control of the Philippine Commonwealth is limited to the geographical confines within the Philippine Islands and is not extended extra-territorially to the United States or foreign countries. The usual practice in International Law is that the treaty or the law provides for a right of election to the inhabitants of the ceded territory to retain the citizenship of their former sovereign or to become nationals of the newly formed government.



We quote Section 10(a) of the Philippine Independence Act, 48 U. S. Stat. 456, which reads as follows:

“On the 4th day of July immediately following the expiration of a period of ten years from the date of the inauguration of the new government under the constitution provided for in this Act the President of the United States shall by proclamation withdraw and surrender all right of possession, supervision, jurisdiction, control or sovereignty then existing and exercised by the United States in and over the territory and people of the Philippine Islands, including all military and other reservations of the Government of the United States in the Philippines (except such naval reservations and fueling stations as are reserved under section 5), and, on behalf of the United States, shall recognize the independence of the Philippine Islands as a separate and self-governing nation and acknowledge the authority and control over the same of the government instituted by the people thereof, under the constitution then in force.”

From the wording of the above quoted section, the United States Government surrendered jurisdiction and control over the territory and people of the Philippine Islands. There is nothing to indicate that the United States desired or intended to surrender jurisdiction and control over the Filipinos residing in the United States.

In the absence of words specifically including the Filipinos residing in the United States, as a matter of statutory construction, the Filipino people residing in

the United States remain under the jurisdiction and control of the United States and are exempt from the jurisdiction and control of the newly formed government. This was the doctrine of the law of nations as evidenced by the cases decided immediately after the Revolutionary War against England. The breaking away of the Thirteen Colonies from the mother country and the breaking away of the Philippine Islands from the United States are identical situations, with only one difference, to-wit: the Thirteen Colonies won their independence by revolution, that is, by force of arms from England, while the Philippine Islands won their independence by the process of evolution, that is, by persistent and continuous manifestations of their ability to govern themselves. The question then arises whether the Filipinos residing in the mother country (U. S.) are citizens of the Philippine Commonwealth only or whether they remain nationals of the United States.

From the decided cases and from the Nationality Act of 1940, we make the following observations:

- (1) That there is a mutual compact between the government and his national which cannot be dissolved by either party without the consent of the other.
- (2) That the Filipino, by remaining in the United States after the Philippine Independence Act, retains his American nationality.
- (3) That the Filipino residing in the United States at the time of the Independence Act, who removes himself from the United States to the Philippines, becomes a Filipino citizen. The

Filipino residing in the Philippines at the time of the Independence Act, who removes himself from the Philippines to the United States for permanent residence, retains his American nationality.

We quote from *In Halleck International Laws*, page 817:

“The rule of international law with respect to the transfer of the allegiance of the inhabitants of conquered territory, as established by the present usage of nations is more fully and correctly stated by Chief Justice Marshall, in delivering the opinion of the Supreme Court of the United States, as follows:

‘On the transfer of territory, the relations of its inhabitants with the former sovereign are dissolved; the same act which transfers their country, *transfers the allegiance of those who remain in it. The allegiance of those who do not remain, of course, is not so transferred with the territory.* In other words, they do not, by the transfer of the country, become the citizens or subjects of the conqueror, nor has he acquired any “absolute and perpetual right of sovereignty” over them. There is no “consent either express or tacit”, on their part in order to make the transfer of allegiance complete and binding.’ ” (Italics ours.)

In the case of *Ware v. Hylton*, 3 Dallas 169, 1 L. Ed. 556 (1796), the court said:

“On the declaration of independence, it was in the option of any subject of Great Britain, to join their brethren in America, or to remain subjects of Great Britain. Those who joined us were

entitled to all the benefits of our freedom and independence; but those who elected to continue subjects of Great Britain, exposed themselves to any loss that might arise therefrom.”

In the case of *Inglis v. Trustees of the Sailor's Snug Harbor*, 3 Peters 313, 7 L. Ed. 617 (1830), Act 120, the court said:

“This question is presented under several aspects, for the purpose of meeting what at present, from the evidence, appears a little uncertain as to the time of the birth of John Inglis. This question, as here presented, does not call upon the court for an opinion upon the broad doctrine of allegiance and the right of expatriation under a settled and unchanged state of society and government. But to decide what are the rights of the individuals composing that society, and living under the protection of that government when a revolution occurs, a dismemberment takes place, new governments are formed, and new relations between the government and the people are established.

If John Inglis, according to the first supposition under this point, was born before 4th of July, 1776, *he is an alien, unless his remaining in New York during the war changed his character, and made him an American citizen.* It is universally admitted, both in the English courts and in those of our own country, that all persons born within the colonies of North America, whilst subject to the crown of Great Britain, were natural-born British subjects, and *it must necessarily follow that that character was changed by the separation of the colonies from the parent state, and the*

*acknowledgment of their independence.” (Italics ours.)*

The court further said at page 315:

*“And our doctrine is, that, by withdrawing from this country and adhering to the British government, they lost, or perhaps more properly speaking, never acquired the character of American citizens.” (Italics ours.)*

Also at page 317, the court said:

*“The case of M’Ilvaine v. Coxe’s Lessee, 4 C. 211, which has been relied upon, will not reach this case. The Court in that case recognized fully the right of election, but considered that Mr. Coxe had lost that right by remaining in the State of New Jersey, not only after she had declared herself a sovereign State, but after she had passed laws by which she pronounced him to be a member of, and in allegiance to the new government; that, by the act of the 4th of October, 1776, he became a member of the new society, entitled to the protection of its government. He continued to reside in New Jersey after the passage of this law, and until some time in the year 1777, thereby making his election to become a member of the new government; and the doctrine of allegiance became applicable to his case, which rests on the ground of a mutual compact between the government and the citizen or subject, which it is said cannot be dissolved by either party without the concurrence of the other. It is the tie which binds the governed to their government, in return for the protection which the government affords them.” (Italics ours.)*



Congress, in the Independence Act, as well as in the Presidential Proclamation, made no allusion or reference to the Filipinos residing in the United States; we must, therefore, leave them in the same situation as if there were no Independence Act or Presidential Proclamation.

In the case of *M'Ilvaine v. Cox's Lessee*, 4 Cranch 211, at 215, 2 L. Ed. 598 (1808), the court said:

“It contains an acknowledgment of the independence and sovereignty of the United States, in their political capacities, and a relinquishment on the part of his Britannic Majesty, of all claim to the government, propriety, and territorial rights of the same. These concessions amounted, no doubt, to a formal renunciation of all claim to the allegiance of the citizens of the United States. *But the question who were at that period citizens of the United States is not decided, or in the slightest degree alluded to, in this instrument; it was left necessarily to depend upon the laws of the respective States, who in their sovereign capacities had acted authoritatively upon the subject. It left all such persons in the situation it found them, neither making those citizens, who had by the laws of any of the States been declared aliens, nor releasing from their allegiance any who had become, and were claimed, as citizens.* It repeals no laws of any of the States which were then in force and operating upon this subject, but on the contrary it recognizes their validity by stipulating that congress should recommend to the States, the reconsideration of such of them as had worked confiscations. If the laws relating to this subject were at that period, in the

language of one of the counsel, temporary and functi officio, they certainly were not rendered so by the terms of the treaty, nor by the political situation of the two nations, in consequence of it. A contrary doctrine is *not only inconsistent with the sovereignties of the States, anterior to, and independent of, the treaty, but its indiscriminate adoption might be productive of more mischief than it is possible for us to foresee.*”

If, then, at the period of the treaty, the laws of New Jersey which had made Daniel Coxe a subject of that State were in full force, and were not repealed, or in any manner affected, by that instrument, if by force of these laws he was incapable of throwing off his allegiance to the State, and derived no right to do so by virtue of the treaty, it follows that he still retains the capacity which he possessed before the treaty, to take lands by descent in New Jersey, and, consequently, that the lessor of the plaintiff is entitled to recover.” (Italics ours.)

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**CONGRESS CANNOT BY DISCRIMINATORY LEGISLATION ARBITRARILY SINGLE OUT U. S. NATIONALS OF FILIPINO DESCENT AND RELEGATE THEM TO THE STATUS OF ALIENS.**

If the logic of the lower court is correct that “the foundations upon which he previously had a right under our law to claim to be a national of the U. S. having disappeared, disintegrated, by reason, of the Philippine Islands becoming an independent nation under the name of the Republic of the Philippines,

this particular plaintiff, I repeat, is no longer able to qualify under our law as a national of the United States", then, the U. S. citizens of Filipino descent became aliens also because the Republic of the Philippines under their citizenship laws recognized them as their citizens. Why should the U. S. nationals of Filipino descent be singled out and discriminated against and not the U. S. citizens of Filipino descent or the U. S. nationals of Samoan or Guamanian descent? If that were true, how can he reconcile it with international law and the U. S. Supreme Court decisions that British citizens, though native-born Americans, retained their British citizenship when they continued to reside and remain in England after the Revolution.

In a recent case, before the Board of Immigration Appeals, in re, File No. A-6869289, reported in 18 U. S. Law Weekly 2121, decided on September 1, 1949, the question arose whether the racial test prescribed by Section 303 of the Nationality Act of 1940, does or does not bar admission of a Samoan-born woman whose half-German and half-Samoan father resided in Samoa when the islands were transferred to the United States. The board said:

*"However, it is established in international law that on transfer of territory by one nation to another, the nationality of the inhabitants of the acquired territory becomes that of the Government under whose dominion they pass, subject to the right of election on their part to retain their former nationality by removal or otherwise, as may be provided. The treaty ceding American*



*Samoa to the United States contained no provision permitting the former nationals of Germany and Great Britain to retain their allegiance to those countries.*

The racial test prescribed by Section 303 of the Nationality Act, which requires that an alien to be eligible for naturalization shall be at least of more than half of blood eligible for naturalization, did not bar the *half-German father from acquiring United States nationality at the time the islands were transferred*. In the first place, the test in Section 303 is established to determine *eligibility for citizenship*, and does not extend to a determination of *eligibility for nationality*. Secondly, the *treaty of transfer did not restrict the transfer of the allegiance of the inhabitants in any way, and when Congress accepted the cession of territory it accepted the allegiance of the inhabitants in accordance with the terms of the treaty*. Thirdly, the racial test is applicable to '*judicial naturalization*' but not to '*congressional naturalization*.' In the latter type, citizenship is bestowed by Congress without regard to blood, and, since the status of a *national is less than the status of a citizen*, there seems to be no logic in imposing a *racial restriction* in acquisition of nationality by *territorial acquisition* when there is no racial restriction with regard to *acquisition of citizenship by territorial acquisition*."

The logic and reasoning in the *Half-Samoan* case, *supra*, is applicable in the instant case. There should not be imposed a racial discrimination against United States nationality acquired by one of Filipino descent residing in the United States where there was no

racial discrimination against United States citizenship acquired by one of Filipino descent residing in the United States.

A Filipino, born in the Philippines, is, first and primarily, a United States national; but at the same time, incidentally, he is also a citizen of the Philippine Islands. His allegiance to the United States is paramount, being greater than his allegiance to the Philippines. His race, color or creed is merged into his status as a United States national.

*Sharon v. Hill, California* (1885), 26 Cal. 337;  
*Hafferstein v. Lyme* (1912), 200 F. 165 (D.C.  
 Mo., 1912).

In *Arver v. United States*, 245 U. S. 366, 38 Sup. Ct. 159 (1917) at 165, the court said:

“In reviewing the subject we have hitherto considered it as it has been argued from the point of view of the Constitution as it stood prior to the adoption of the Fourteenth Amendment. But to avoid all misapprehension we briefly direct attention to that amendment for the purpose of pointing out, as has been frequently done in the past, *how completely it broadened the national scope of the government under the Constitution by causing citizenship of the United States to be paramount and dominant instead of being subordinate and derivative*, and therefore operating as it does upon all the powers conferred by the Constitution leaves no possible support for the contentions made if their want of merit was otherwise not so clearly made manifest.” (Italics ours.)

CONGRESS HAS, BY VIRTUE OF THE NATIONALITY ACT OF 1940, DECLARED THAT A NATIONAL CAN LOSE HIS U. S. NATIONALITY SOLELY FROM ANY VIOLATION OF THE ENUMERATED GROUNDS STATED IN SECTION 801, 8 U.S.C.A. (UNDERSCORING OURS).

Section 801 of 8 U.S.C.A. defines the general means of losing United States nationality, as follows:

“A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:” (Thereby naming 10 different means of losing nationality).

As a matter of statutory construction, the doctrine of *enumeratio unius est exclusio*, is applicable and consequently, Congress had no power of expatriating the United States nationals of Filipino descent residing permanently in the United States, when Section 801 of 8 U.S.C.A. provides the general means of losing United States nationality.

Section 808 of 8 U.S.C.A., defines the exclusiveness of losing nationality, as follows:

*“The loss of nationality under this chapter shall result solely from the performance by a national of the acts or fulfillment of the conditions specified in this chapter.”* (Italics ours.)

Section 803 of 8 U.S.C.A. reads:

“Restrictions on expatriation; residence in United States; age (a) Except as provided in subsections (g), (h), and (i) of Section 801, *no national can expatriate himself, or be expatriated, under this section while within the United States or any of its outlying possessions*, but expatriation shall result from the performance within the

United States or any of its outlying possessions of any of the acts or the fulfillment of any of the conditions specified in this section *if and when the national thereafter takes up a residence abroad.*" (Italics ours.)

From the foregoing, it would seem that a Filipino cannot "be expatriated" by Congress, or even if he wants to be expatriated, he cannot do so while residing in U. S. or its outlying possession.

The above quoted sections include both U. S. citizens and nationals. It is our contention that if Congress cannot denaturalize or expatriate a U. S. citizen, by the same token, it cannot denationalize a U. S. national.

On July 2, 1946, the United States bestowed upon the "Filipino person or persons of Filipino descent", the right to become a naturalized citizen, said right being deemed the highest honor and privilege ever to be bestowed upon a Filipino by the United States. But, two days later, on July 4, 1946, when the Filipinos were given their independence, it seems this same benign government had a change of heart and condemned the U. S. nationals of Filipino descent, despite his desire to remain a United States national and not to become a part of the newly created alien government, to exile as aliens. That, we do not believe was the intent of Congress. The "right of expatriation" is a natural and inherent right and is protected by the 5th Amendment of the Constitution.

WE HAVE REITERATED AND REAFFIRMED THAT "THE RIGHT OF EXPATRIATION IS A NATURAL AND INHERENT RIGHT OF ALL PEOPLE, INDISPENSABLE TO THE ENJOYMENT OF THE RIGHTS OF LIFE, LIBERTY AND THE PURSUIT OF HAPPINESS". THIS IS A VESTED, PERSONAL AND SUBSTANTIVE RIGHT PROTECTED BY THE FIFTH AMENDMENT OF THE U. S. CONSTITUTION.

In Brannon's "The Fourteenth Amendment", at page 34 (1901), the author said:

"But, though the Filipinos are not within the naturalization laws, still they are American free-men, entitled as persons, under the Fifth and Sixth Amendments to the Constitution of the United States, and under the Civil Rights Act and the free spirit of our government, to the personal rights accorded by the benign system of government of the United States. They are subject to our jurisdiction and laws, and from that very fact they are freemen in a free republican government, not subjects of an empire or monarchy. The treaty of peace with Spain did not give the inhabitants of these islands citizenship, but committed the government of them to Congress. Congress must govern them according to principles of American free government. As the treaty conveys the islands to us, we must regard our right as based on cession, not conquest, a consideration repelling all thought of power of imposing arbitrary government on those people."

If the right of citizenship is a vested right, we respectfully contend that the right of nationality should also be a vested right which cannot be defeated by legislative repeal.



*In re Watson*, 42 F. S. 163 at 166 (D.C. Ill. 1941), the court said :

“The vested right of citizenship cannot be defeated by repeal. It is too well known to require citation of authority that vested rights cannot be defeated by legislative repeal.”

It is an admitted fact that, in the matter of statutory construction and interpretation, where there is any doubt as to divesting a person of his citizenship or nationality, it should resolve in favor of the United States national, as evidenced by the opinion in 48 Columbia Law Review, 957 (September, 1948, issue) from which we quote as follows :

“In interpreting these denaturalization provisions, the Supreme Court, cognizant of the serious consequences which may follow the loss of citizenship, has resolved any doubt in favor of the naturalized person. It has given a strong presumption of validity to naturalization proceedings, requiring that a charge of fraud or illegality be sustained by ‘clear, unequivocal, and convincing proof’.”

We respectfully submit that to advocate a totalitarian philosophy that Congress can capriciously and arbitrarily destroy human right by legislative repeal is pernicious to the philosophy of democracy which believes in the dignity of man.

The doctrine of democracy protects the rights of the individual, guarantees that his life shall be secure, and sees that he shall have opportunities for self-realiza-

tion, without fear that the government will impair those natural and inherent rights of security and self-realization. Without this protection, these nationals would not expend their personal efforts to build their future or try to realize their dreams because they would know that Congress may arbitrarily cut the ground under their feet by discriminatory legislation and reduce them to the lowly status of aliens.

Furthermore, the problem of these nationals is, by its very own nature, self-liquidating. It applies to a specific class of people who are already in the United States and who, in the natural course of events, will reach the end of their life span over an average period of 25 years. Why not, then, let the nationals be happy and secure in their existing status and let time take care of the problem?

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**CONGRESS BY RELEGATING HIS STATUS FROM THAT OF A U. S. NATIONAL TO THAT OF AN ALIEN, DENIES HIS FREEDOM OF SPEECH BECAUSE HE CAN NO LONGER STATE TRUTHFULLY, 'I AM AN AMERICAN', CONTRARY TO THE FIRST AMENDMENT OF THE CONSTITUTION.**

Prior to the Philippine Independence Act, the U. S. national of Filipino descent was proud of the fact that he was an American! He could proclaim proudly that he was an American. Now he dares not do so. He would be deemed guilty of impersonation as an American if we concede that, by virtue of the Philippine Independence Act, he is no longer a national of

the United States. Thus, the Philippine Independence Act, as construed and applied by the Government, violates appellant's freedom of speech contrary to the First Amendment of the Constitution.

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CONGRESS, BY REDUCING APPELLANT'S STATUS FROM THAT OF A U. S. NATIONAL TO THAT OF AN ALIEN, IN EFFECT RETROACTIVELY CAUSED HIM TO LOSE ALL OF HIS RIGHTS AS A U. S. NATIONAL, CONTRARY TO SECTION 9, ARTICLE I OF THE CONSTITUTION.

Congress, by reducing appellant's status from that of a U. S. national to that of an alien, makes appellant subject to deportation if he commits two felonies; removes his eligibility to be employed by the Federal and/or Territorial government; curtails his freedom to travel between the United States and foreign countries; takes away other rights, liberties, privileges and immunities heretofore enjoyed by him as a U. S. national.

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CONGRESS, BY CHANGING APPELLANT'S STATUS FROM THAT OF A U. S. NATIONAL TO THAT OF AN ALIEN DOES, IN EFFECT, BANISH AND EXILE HIM AND THEREBY DOES INFLICT CRUEL AND UNUSUAL PUNISHMENT UPON HIM, CONTRARY TO THE EIGHTH AMENDMENT OF THE CONSTITUTION.

In the case of *Klapprott v. United States*, 93 Law. Edition 280, decided January 17, 1949, the Court said:

*"To take away a man's citizenship deprives him of a right no less precious than life or liberty, in-*



*deed of one which today comprehends those rights and almost all others. To lay upon the citizen the punishment of exile for committing murder, or even treason, is a penalty thus far unknown to our law, and at most but doubtfully within Congress' power. U. S. Const. Amend. VIII. Yet by the device or label of a civil suit, carried forward with none of the safeguards of criminal procedure provided by the Bill of Rights, this most comprehensive and basic right of all, so it has been held, can be taken away and in its wake may follow the most cruel penalty of banishment."*

Applying the foregoing to the instant case, we may logically and reasonably submit that to declare appellant is no longer a U. S. national but an alien is to virtually banish and exile him, contrary to <sup>Amendment</sup> ~~Section 8,~~ ~~Article I~~ of the U. S. Constitution. He is no longer considered one of us! His allegiance to the United States is no longer wanted; he is forced to be a citizen of a new nation to which he does not wish to belong, despite his wish to remain a U. S. national. He is considered a stranger in our midst! If that is not banishment and exile, what is?

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### CONCLUSION.

In conclusion, we respectfully submit that the humane and reasonable interpretation of the Independence Act is that it does not divest Filipinos residing in the United States of their status as United States nationals and reduce them to the status of aliens.

Dated, Honolulu, Territory of Hawaii, this 17th day  
of December, A. D. 1949.

Respectfully submitted,

ARCADIO CABEBE,

*Plaintiff-Appellant,*

By W. Y. CHAR, SAU UNG CHAN AND

YASUTAKA FUKUSHIMA,

Per W. Y. CHAR,

*His Attorneys.*

**(Appendix Follows.)**





## Appendix

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### PHILIPPINE INDEPENDENCE ACT

March 24, 1934

[H. R. 8573]

[Public, No. 127]

(48 Stat. 456)

[CHAPTER 84]

### AN ACT

To provide for the complete independence of the Philippine Islands, to provide for the adoption of a constitution and a form of government for the Philippine Islands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

### CONVENTION TO FRAME CONSTITUTION FOR PHILIPPINE ISLANDS

Section 1. The Philippine Legislature is hereby authorized to provide for the election of delegates to a constitutional convention, which shall meet in the hall of the house of representatives in the capital of the Philippine Islands, at such time as the Philippine Legislature may fix, but not later than October 1, 1934, to formulate and draft a constitution for the government of the Commonwealth of the Philippine Islands, subject to the conditions and qualifications prescribed in this Act, which shall exercise jurisdiction over all the territory ceded to the United States by the treaty

of peace concluded between the United States and Spain on the 10th day of December, 1898, the boundaries of which are set forth in article III of said treaty, together with those islands embraced in the treaty between Spain and the United States concluded at Washington on the 7th day of November, 1900. The Philippine Legislature shall provide for the necessary expenses of such convention.

### CHARACTER OF CONSTITUTION—MANDATORY PROVISIONS

Sec. 2. (a) The constitution formulated and drafted shall be republican in form, shall contain a bill of rights, and shall, either as a part thereof or in an ordinance appended thereto, contain provisions to the effect that, pending the final and complete withdrawal of the sovereignty of the United States over the Philippine Islands—

(1) All citizens of the Philippine Islands shall owe allegiance to the United States.

(2) Every officer of the government of the Commonwealth of the Philippine Islands shall, before entering upon the discharge of his duties take and subscribe an oath of office, declaring, among other things, that he recognizes and accepts the supreme authority of and will maintain true faith and allegiance to the United States.

(3) Absolute toleration of religious sentiment shall be secured and no inhabitant or religious organization

shall be molested in person or property on account of religious belief or worship.

(4) Property owned by the United States, cemeteries, churches, and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious, charitable, or educational purposes shall be exempt from taxation.

(5) Trade relations between the Philippine Islands and the United States shall be upon the basis prescribed in section 6.

(6) The public debt of the Philippine Islands and its subordinate branches shall not exceed limits now or hereafter fixed by the Congress of the United States; and no loans shall be contracted in foreign countries without the approval of the President of the United States.

(7) The debts, liabilities, and obligations of the present Philippine government, its Provinces, municipalities, and instrumentalities, valid and subsisting at the time of the adoption of the constitution, shall be assumed and paid by the new government.

(8) Provision shall be made for the establishment and maintenance of an adequate system of public schools, primarily conducted in the English language.

(9) Acts affecting currency, coinage, imports, exports, and immigration shall not become law until approved by the President of the United States.

(10) Foreign affairs shall be under the direct supervision and control of the United States.



(11) All acts passed by the Legislature of the Commonwealth of the Philippine Islands shall be reported to the Congress of the United States.

(12) The Philippine Islands recognizes the right of the United States to expropriate property for public uses, to maintain military and other reservations and armed forces in the Philippines, and, upon order of the President, to call into the service of such armed forces all military forces organized by the Philippine government.

(13) The decisions of the courts of the Commonwealth of the Philippine Islands shall be subject to review by the Supreme Court of the United States as provided in paragraph (6) of section 7.

(14) The United States may, by Presidential proclamation, exercise the right to intervene for the preservation of the government of the Commonwealth of the Philippine Islands and for the maintenance of the government as provided in the constitution thereof, and for the protection of life, property, and individual liberty and for the discharge of government obligations under and in accordance with the provisions of the constitution.

(15) The authority of the United States High Commissioner to the government of the Commonwealth of the Philippine Islands, as provided in this Act, shall be recognized.

(16) Citizens and corporations of the United States shall enjoy in the Commonwealth of the Philippine



Islands all the civil rights of the citizens and corporations, respectively, thereof.

(b) The constitution shall also contain the following provisions, effective as of the date of the proclamation of the President recognizing the independence of the Philippine Islands, as hereinafter provided:

(1) That the property rights of the United States and the Philippine Islands shall be promptly adjusted and settled, and that all existing property rights of citizens or corporations of the United States shall be acknowledged, respected, and safeguarded to the same extent as property rights of citizens of the Philippine Islands.

(2) That the officials elected and serving under the constitution adopted pursuant to the provisions of this Act shall be constitutional officers of the free and independent government of the Philippine Islands and qualified to function in all respects as if elected directly under such government, and shall serve their full terms of office as prescribed in the constitution.

(3) That the debts and liabilities of the Philippine Islands, its Provinces, cities, municipalities, and instrumentalities, which shall be valid and subsisting at the time of the final and complete withdrawal of the sovereignty of the United States, shall be assumed by the free and independent government of the Philippine Islands; and that where bonds have been issued under authority of an Act of Congress of the United States by the Philippine Islands, or any Province, city, or municipality therein, the Philippine government will

make adequate provision for the necessary funds for the payment of interest and principal, and such obligations shall be a first lien on the taxes collected in the Philippine Islands.

(4) That the government of the Philippine Islands, on becoming independent of the United States, will assume all continuing obligations assumed by the United States under the treaty of peace with Spain ceding said Philippine Islands to the United States.

(5) That by way of further assurance the government of the Philippine Islands will embody the foregoing provisions (except paragraph (2)) in a treaty with the United States.

#### SUBMISSION OF CONSTITUTION TO THE PRESIDENT OF THE UNITED STATES.

Sec. 3. Upon the drafting and approval of the constitution by the constitutional convention in the Philippine Islands, the constitution shall be submitted within two years after the enactment of this Act to the President of the United States, who shall determine whether or not it conforms with the provisions of this Act. If the President finds that the proposed constitution conforms substantially with the provisions of this Act he shall so certify to the Governor General of the Philippine Islands, who shall so advise the constitutional convention. If the President finds that the constitution does not conform with the provisions of this Act he shall so advise the Governor General of the Philippine Islands, stating wherein in his judgment the constitution does not so conform and submitting

provisions which will in his judgment make the constitution so conform. The Governor General shall in turn submit such message to the constitutional convention for further action by them pursuant to the same procedure hereinbefore defined, until the President and the constitutional convention are in agreement.

#### SUBMISSION OF CONSTITUTION TO FILIPINO PEOPLE.

Sec. 4. After the President of the United States has certified that the constitution conforms with the provisions of this Act, it shall be submitted to the people of the Philippine Islands for their ratification or rejection at an election to be held within four months after the date of such certification, on a date to be fixed by the Philippine Legislature, at which election the qualified voters of the Philippine Islands shall have an opportunity to vote directly for or against the proposed constitution and ordinances appended thereto. Such election shall be held in such manner as may be prescribed by the Philippine Legislature, to which the return of the election shall be made. The Philippine Legislature shall by law provide for the canvassing of the return and shall certify the result to the Governor General of the Philippine Islands, together with a statement of the votes cast, and a copy of said constitution and ordinances. If a majority of the votes cast shall be for the constitution, such vote shall be deemed an expression of the will of the people of the Philippine Islands in favor of Philippine independence, and the Governor General shall,

within thirty days after receipt of the certification from the Philippine Legislature, issue a proclamation for the election of officers of the government of the Commonwealth of the Philippine Islands provided for in the constitution. The election shall take place not earlier than three months nor later than six months after the proclamation by the Governor General ordering such election. When the election of the officers provided for under the constitution has been held and the results determined, the Governor General of the Philippine Islands shall certify the results of the election to the President of the United States, who shall thereupon issue a proclamation announcing the results of the election, and upon the issuance of such proclamation by the President the existing Philippine government shall terminate and the new government shall enter upon its rights, privileges, powers, and duties, as provided under the constitution. The present government of the Philippine Islands shall provide for the orderly transfer of the functions of government.

If a majority of the votes cast are against the constitution, the existing government of the Philippine Islands shall continue without regard to the provisions of this Act.

#### TRANSFER OF PROPERTY AND RIGHTS TO PHILIPPINE COMMONWEALTH.

Sec. 5. All the property and rights which may have been acquired in the Philippine Islands by the United States under the treaties mentioned in the first section of this Act, except such land or other property as

has heretofore been designated by the President of the United States for Military and other reservations of the Government of the United States, and except such land or other property or rights or interests therein as may have been sold or otherwise disposed of in accordance with law, are hereby granted to the government of the Commonwealth of the Philippine Islands when constituted.

## RELATIONS WITH THE UNITED STATES PENDING COMPLETE INDEPENDENCE

Sec. 6. After the date of the inauguration of the government of the Commonwealth of the Philippine Islands trade relations between the United States and the Philippine Islands shall be as now provided by law, subject to the following exceptions:

(a) There shall be levied, collected, and paid on all refined sugars in excess of fifty thousand long tons, and on unrefined sugars in excess of eight hundred thousand long tons, coming into the United States from the Philippine Islands in any calendar year, the same rates of duty which are required by the laws of the United States to be levied, collected, and paid upon like articles imported from foreign countries.

(b) There shall be levied, collected, and paid on all coconut oil coming into the United States from the Philippine Islands in any calendar year in excess of two hundred thousand long tons, the same rates of duty which are required by the laws of the United States to be levied, collected, and paid upon like articles imported from foreign countries.



(c) There shall be levied, collected, and paid on all yarn, twine, cord, cordage, rope and cable, tarred or untarred, wholly or in chief value of manila (abaca) or other hard fibers, coming into the United States from the Philippine Islands in any calendar year in excess of a collective total of three million pounds of all such articles hereinbefore enumerated, the same rates of duty which are required by the laws of the United States to be levied, collected, and paid upon like articles imported from foreign countries.

(d) In the event that in any year the limit in the case of any article which may be exported to the United States free of duty shall be reached by the Philippine Islands, the amount or quantity of such articles produced or manufactured in the Philippine Islands thereafter that may be so exported to the United States free of duty shall be allocated, under export permits issued by the government of the Commonwealth of the Philippine Islands, to the producers or manufacturers of such articles proportionately on the basis of their exportation to the United States in the preceding year; except that in the case of unrefined sugar the amount thereof to be exported annually to the United States free of duty shall be allocated to the sugar-producing mills of the islands proportionately on the basis of their average annual production for the calendar years 1931, 1932, and 1933, and the amount of sugar from each mill which may be so exported shall be allocated in each year between the mill and the planters on the basis of the proportion of sugar to which the mill and the planters are respec-



tively entitled. The government of the Philippine Islands is authorized to adopt the necessary laws and regulations for putting into effect the allocation hereinbefore provided.

(e) The government of the Commonwealth of the Philippine Islands shall impose and collect an export tax on all articles that may be exported to the United States from the Philippine Islands free of duty under the provisions of existing law as modified by the foregoing provisions of this section, including the articles enumerated in subdivisions (a), (b), and (c), within the limitations therein specified, as follows:

(1) During the sixth year after the inauguration of the new government the export tax shall be 5 per centum of the rates of duty which are required by the laws of the United States to be levied, collected, and paid on like articles imported from foreign countries;

(2) During the seventh year after the inauguration of the new government the export tax shall be 10 per centum of the rates of duty which are required by the laws of the United States to be levied, collected, and paid on like articles imported from foreign countries;

(3) During the eighth year after the inauguration of the new government the export tax shall be 15 per centum of the rates of duty which are required by the laws of the United States to be levied, collected, and paid on like articles imported from foreign countries;

(4) During the ninth year after the inauguration of the new government the export tax shall be 20 per

centum of the rates of duty which are required by the laws of the United States to be levied, collected, and paid on like articles imported from foreign countries;

(5) After the expiration of the ninth year after the inauguration of the new government the export tax shall be 25 per centum of the rates of duty which are required by the laws of the United States to be levied, collected, and paid on like articles imported from foreign countries.

The government of the Commonwealth of the Philippine Islands shall place all funds received from such export taxes in a sinking fund, and such funds shall, in addition to other moneys available for that purpose, be applied solely to the payment of the principal and interest on the bonded indebtedness of the Philippine Islands, its Provinces, municipalities, and instrumentalities, until such indebtedness has been fully discharged.

When used in this section in a geographical sense, the term "United States" includes all Territories and possessions of the United States, except the Philippine Islands, the Virgin Islands, American Samoa, and the island of Guam.

Sec. 7. Until the final and complete withdrawal of American sovereignty over the Philippine Islands—

(1) Every duly adopted amendment to the constitution of the government of the Commonwealth of the Philippine Islands shall be submitted to the President of the United States for approval. If the President approves the amendment or if the President fails to

disapprove such amendment within six months from the time of its submission, the amendment shall take effect as a part of such constitution.

(2) The President of the United States shall have authority to suspend the taking effect of or the operation of any law, contract, or executive order of the government of the Commonwealth of the Philippine Islands, which in his judgment will result in a failure of the government of the Commonwealth of the Philippine Islands to fulfill its contracts, or to meet its bonded indebtedness and interest thereon or to provide for its sinking funds, or which seems likely to impair the reserves for the protection of the currency of the Philippine Islands, or which in his judgment will violate international obligations of the United States.

(3) The Chief Executive of the Commonwealth of the Philippine Islands shall make an annual report to the President and Congress of the United States of the proceedings and operations of the government of the Commonwealth of the Philippine Islands and shall make such other reports as the President or Congress may request.

(4) The President shall appoint, by and with the advice and consent of the Senate, a United States High Commissioner to the government of the Commonwealth of the Philippine Islands who shall hold office at the pleasure of the President and until his successor is appointed and qualified. He shall be known as the United States High Commissioner to

the Philippine Islands. He shall be the representative of the President of the United States in the Philippine Islands and shall be recognized as such by the government of the Commonwealth of the Philippine Islands, by the commanding officers of the military forces of the United States, and by all civil officials of the United States in the Philippine Islands. He shall have access to all records of the government or any subdivision thereof, and shall be furnished by the Chief Executive of the Commonwealth of the Philippine Islands with such information as he shall request.

If the government of the Commonwealth of the Philippine Islands fails to pay any of its bonded or other indebtedness or the interest thereon when due or to fulfill any of its contracts, the United States High Commissioner shall immediately report the facts to the President, who may thereupon direct the High Commissioner to take over the customs offices and administration of the same, administer the same, and apply such part of the revenue received therefrom as may be necessary for the payment of such overdue indebtedness or for the fulfillment of such contracts. The United States High Commissioner shall annually, and at such other times as the President may require, render an official report to the President and Congress of the United States. He shall perform such additional duties and functions as may be delegated to him from time to time by the President under the provisions of this Act.

The United States High Commissioner shall receive the same compensation as is now received by the

Governor General of the Philippine Islands, and shall have such staff and assistants as the President may deem advisable and as may be appropriated for by Congress, including a financial expert, who shall receive for submission to the High Commissioner a duplicate copy of the reports of the insular auditor. Appeals from decisions of the insular auditor may be taken to the President of the United States. The salaries and expenses of the High Commissioner and his staff and assistants shall be paid by the United States.

The first United States High Commissioner appointed under this Act shall take office upon the inauguration of the new government of the Commonwealth of the Philippine Islands.

(5) The government of the Commonwealth of the Philippine Islands shall provide for the selection of a Resident Commissioner to the United States, and shall fix his term of office. He shall be the representative of the government of the Commonwealth of the Philippine Islands and shall be entitled to official recognition as such by all departments upon presentation to the President of credentials signed by the Chief Executive of said government. He shall have a seat in the House of Representatives of the United States, with the right of debate, but without the right of voting. His salary and expenses shall be fixed and paid by the government of the Philippine Islands. Until a Resident Commissioner is selected and qualified under this section, existing law governing the



appointment of Resident Commissioners from the Philippine Islands shall continue in effect.

(6) Review by the Supreme Court of the United States of cases from the Philippine Islands shall be as now provided by law; and such review shall also extend to all cases involving the constitution of the Commonwealth of the Philippine Islands.

Sec. 8. (a) Effective upon the acceptance of this Act by concurrent resolution of the Philippine Legislature or by a convention called for that purpose, as provided in section 17—

(1) For the purposes of the Immigration Act of 1917, the Immigration Act of 1924 (except section 13(c)), this section, and all other laws of the United States relating to the immigration, exclusion, or expulsion of aliens, citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens. For such purposes the Philippine Islands shall be considered as a separate country and shall have for each fiscal year a quota of fifty. This paragraph shall not apply to a person coming or seeking to come to the Territory of Hawaii who does not apply for and secure an immigration or passport visa, but such immigration shall be determined by the Department of the Interior on the basis of the needs of industries in the Territory of Hawaii.

(2) Citizens of the Philippine Islands who are not citizens of the United States shall not be admitted to the continental United States from the Territory of



Hawaii (whether entering such Territory before or after the effective date of this section) unless they belong to a class declared to be nonimmigrants by section 3 of the Immigration Act of 1924 or to a class declared to be nonquota immigrants under the provisions of section 4 of such Act other than subdivision (c) thereof, or unless they were admitted to such Territory under an immigration visa. The Secretary of Labor shall by regulations provide a method for such exclusion and for the admission of such excepted classes.

(3) Any Foreign Service officer may be assigned to duty in the Philippine Islands, under a commission as a consular officer, for such period as may be necessary and under such regulations as the Secretary of State may prescribe, during which assignment such officer shall be considered as stationed in a foreign country; but his powers and duties shall be confined to the performance of such of the official acts and notarial and other services, which such officer might properly perform in respect of the administration of the immigration laws if assigned to a foreign country as a consular officer, as may be authorized by the Secretary of State.

(4) For the purpose of sections 18 and 20 of the Immigration Act of 1917, as amended, the Philippine Islands shall be considered to be a foreign country.

(b) The provisions of this section are in addition to the provisions of the immigration laws now in force, and shall be enforced as a part of such laws,

and all the penal or other provisions of such laws not inapplicable, shall apply to and be enforced in connection with the provisions of this section. An alien, although admissible under the provisions of this section, shall not be admitted to the United States if he is excluded by any provision of the immigration laws other than this section, and an alien, although admissible under the provisions of the immigration laws other than this section, shall not be admitted to the United States if he is excluded by any provision of this section.

(c) Terms defined in the Immigration Act of 1924 shall, when used in this section, have the meaning assigned to such terms in that Act.

Sec. 9. There shall be no obligation on the part of the United States to meet the interest or principal of bonds and other obligations of the government of the Philippine Islands or the Provincial and municipal governments thereof, hereafter issued during the continuance of United States sovereignty in the Philippine Islands: Provided, That such bonds and obligations hereafter issued shall not be exempt from taxation in the United States or by authority of the United States.

#### RECOGNITION OF PHILIPPINE INDEPENDENCE AND WITHDRAWAL OF AMERICAN SOVEREIGNTY

Sec. 10. (a) On the 4th day of July immediately following the expiration of a period of ten years from the date of the inauguration of the new government under the constitution provided for in this Act the

President of the United States shall by proclamation withdraw and surrender all right of possession, supervision, jurisdiction, control, or sovereignty then existing and exercised by the United States in and over the territory and people of the Philippine Islands, including all military and other reservations of the Government of the United States in the Philippines (except such naval reservations and fueling stations as are reserved under section 5), and, on behalf of the United States, shall recognize the independence of the Philippine Islands as a separate and self-governing nation and acknowledge the authority and control over the same of the government instituted by the people thereof, under the constitution then in force.

(b) The President of the United States is hereby authorized and empowered to enter into negotiations with the government of the Philippine Islands not later than two years after his proclamation recognizing the independence of the Philippine Islands, for the adjustment and settlement of all questions relating to naval reservations and fueling stations of the United States in the Philippine Islands, and pending such adjustment and settlement the matter of naval reservations and fueling stations shall remain in its present status.

#### NEUTRALIZATION OF PHILIPPINE ISLANDS

Sec. 11. The President is requested, at the earliest practicable date, to enter into negotiations with foreign powers with a view to the conclusion of a

treaty for the perpetual neutralization of the Philippine Islands, if and when Philippine independence shall have been achieved.

#### NOTIFICATION TO FOREIGN GOVERNMENTS

Sec. 12. Upon the proclamation and recognition of the independence of the Philippine Islands, the President shall notify the governments with which the United States is in diplomatic correspondence thereof and invite said governments to recognize the independence of the Philippine Islands.

#### TARIFF DUTIES AFTER INDEPENDENCE

Sec. 13. After the Philippine Islands have become a free and independent nation there shall be levied, collected, and paid upon all articles coming into the United States from the Philippine Islands the rates of duty which are required to be levied, collected, and paid upon like articles imported from other foreign countries: Provided, That at least one year prior to the date fixed in this Act for the independence of the Philippine Islands, there shall be held a conference of representatives of the Government of the United States and the government of the Commonwealth of the Philippine Islands, such representatives to be appointed by the President of the United States and the Chief Executive of the Commonwealth of the Philippine Islands, respectively, for the purpose of formulating recommendations as to future trade relations between the Government of the United States and the independent government of the Philippine

Islands, the time, place, and manner of holding such conference to be determined by the President of the United States; but nothing in this proviso shall be construed to modify or affect in any way any provision of this Act relating to the procedure leading up to Philippine independence or the date upon which the Philippine Islands shall become independent.

#### IMMIGRATION AFTER INDEPENDENCE

Sec. 14. Upon the final and complete withdrawal of American sovereignty over the Philippine Islands the immigration laws of the United States (including all the provisions thereof relating to persons ineligible to citizenship) shall apply to persons who were born in the Philippine Islands to the same extent as in the case of other foreign countries.

#### CERTAIN STATUTES CONTINUED IN FORCE

Sec. 15. Except as in this Act otherwise provided, the laws now or hereafter in force in the Philippine Islands shall continue in force in the Commonwealth of the Philippine Islands until altered, amended, or repealed by the Legislature of the Commonwealth of the Philippine Islands or by the Congress of the United States, and all references in such laws to the government or officials of the Philippines or Philippine Islands shall be construed, insofar as applicable, to refer to the government and corresponding officials respectively of the Commonwealth of the Philippine Islands. The government of the Commonwealth of the Philippine Islands shall be deemed successor to the present government of the Philippine Islands and



of all the rights and obligations thereof. Except as otherwise provided in this Act, all laws or parts of laws relating to the present government of the Philippine Islands and its administration are hereby repealed as of the date of the inauguration of the government of the Commonwealth of the Philippine Islands.

Sec. 16. If any provision of this Act is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and the applicability of such provisions to other persons and circumstances shall not be affected thereby.

#### EFFECTIVE DATE

Sec. 17. The foregoing provisions of this Act shall not take effect until accepted by concurrent resolution of the Philippine Legislature or by a convention called for the purpose of passing upon that question as may be provided by the Philippine Legislature.

Approved, March 24, 1934.

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#### INDEPENDENCE OF THE PHILIPPINES BY THE PRESIDENT OF THE UNITED STATES OF AMERICA A PROCLAMATION

(July 4, 1946)

[No. 2695]

(60 Stat. 1352)

WHEREAS the United States of America by the Treaty of Peace with Spain of December 10, 1898,



commonly known as the Treaty of Paris, and by the Treaty with Spain of November 7, 1900, did acquire sovereignty over the Philippines and by the Convention of January 2, 1930, with Great Britain did delimit the boundary between the Philippine Archipelago and the State of North Borneo; and

WHEREAS the United States of America has consistently and faithfully during the past forty-eight years exercised jurisdiction and control over the Philippines and its people; and

WHEREAS it has been the repeated declaration of the legislative and executive branches of the Government of the United States of America that full independence would be granted the Philippines as soon as the people of the Philippines were prepared to assume this obligation; and

WHEREAS the people of the Philippines have clearly demonstrated their capacity for self-government; and

WHEREAS the Act of Congress approved March 24, 1934, known as the Philippine Independence Act, directed that, on the 4th day of July immediately following a ten-year transitional period leading to the independence of the Philippines, the President of the United States of America should by proclamation withdraw and surrender all rights of possession, supervision, jurisdiction, control, or sovereignty of the United States of America in and over the territory and people of the Philippines, except certain reservations therein or thereafter authorized to be made, and, on behalf of the United States of America, should recognize the independence of the Philippines:

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, acting under and by virtue of the authority vested in me by the aforesaid act of Congress, do proclaim that, in accord with and subject to the reservations provided for in the applicable statutes of the United States,

The United States of America hereby withdraws and surrenders all rights of possession, supervision, jurisdiction, control, or sovereignty now existing and exercised by the United States of America in and over the territory and people of the Philippines; and,

On behalf of the United States of America, I do hereby recognize the independence of the Philippines as a separate and self-governing nation and acknowledge the authority and control over the same of the government instituted by the people thereof, under the constitution now in force.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this Fourth day of July in the year of our Lord, nineteen hundred and forty-six, and of the Independence of the United States of America the one hundred and seventy-first.

[SEAL]

HARRY S TRUMAN

By the President:

DEAN ACHESON

Acting Secretary of State.

CONSTITUTION  
OF THE UNITED STATES OF AMERICA.  
Article I.

Section 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year One thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

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AMENDMENTS TO THE CONSTITUTION.  
Article I.—1791.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Article V.—1791.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising

in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation.

Article VIII.—1791.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.